IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 839 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
   YES

2. To be referred to the Reporter or not? : YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
   NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
   NO

5. Whether it is to be circulated to the Civil Judge? : NO
   NO

AZIM HASHAN PREMJI

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Petitioners
MR ST MEHTA APP for Respondent No. 1
MR KH BAXI for Respondent No. 2
NOTICE SERVED for Respondent No. 3
MR AS VAKIL for Respondent No. 4, 5

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 prays quashing of the proceedings in Criminal Case No.6 of 1990 pending in the Court of the learned 5th Joint Judicial Magistrate, First Class at Bhavnagar wherein processes are ordered to be issued to the seven accused, including the five petitioners. The original accused No.1 is the company of which the present petitioners are directors and the accused No.7 is the factory manager. The accused No.1 company and the accused No.7 factory manager have not filed any petition for quashing, but are joined as respondents No.4 and 5 in the present petition.

2. It is the case of the petitioners that the company has nominated, constituted and appointed, for its Division at Bhavnagar, the attorney of the company to do, perform and execute for and on behalf of the company the acts, deeds and things as specified in the power of attorney. They had obtained, for its factory at Bhavnagar, the consent under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (the Act) for the use of existing/new outlet for discharge of effluent. The company had put up an effluent treatment plant, which had to be shut down for repairs. However, due to heavy rains, the repairs remained incomplete and the effluent treatment plant was partially recommissioned. Then, samples of discharge were drawn by the Gujarat Pollution Control Board (the Board, for short) and after analysis thereof, a show cause notice as to why legal action should not be initiated was served upon the company. Thereafter, Criminal Case No.6 of 1990 was filed for violations of the provisions of Sections 24 and 25 punishable under Sections 43 and 44 read with Section 47 of the Act. It is the case of the petitioners that the allegations contained in the complaint did not disclose any offence, and particularly the allegations did not connect the present petitioners with any offence. Thus, according to the petitioners, the trial Court has taken cognizance of the alleged offence and ordered to issue the process without forming any opinion and without application of mind. It is contended that the petitioners, who are directors, do not necessarily have any executive powers or functions and, by virtue of their office, do not have the ultimate control over the affairs of the company's factory. Instead, if the company had, by a resolution of the board of directors, put an officer in the ultimate control of the affairs of the factory, that officer would be the occupier and in charge of that factory.

3. In the context of these contentions, it would be

necessary to refer to certain relevant parts of the complaint filed by the Board through its Environmental Engineer. It is stated in the complaint that the complaint is filed pursuant to a sanction order and default data sheet; that the accused No.2 to 7 were responsible for and in charge of the conduct of the business of the company; that the accused had been manufacturing vegetable oil and acidic oil, caustic soda, hydrogenic oil etc. using raw materials like edible oil, phosphoric acid, borax, citric acid, earth carbon, sulphuric acid, hexane, caustic soda, nickel catalyst etc. and consumed a substantial quantity of water and discharged about 20,000 litres of trade effluent daily; that the accused had not obtained any consent as required under the relevant Rules for a long time since its inception but, after initiation of effective steps, the accused were forced to obtain the requisite consent order; that the consent order granted for discharging the trade effluent under Section 25 of the Act subject to various obligatory terms and conditions contained therein, inter alia, stipulated that all necessary treatment plants should be set up very soon so as to achieve the quality of trade effluent according to the tolerance limit. However, it was observed that the treatment plants of the company were never working at the time of the monitoring inspection visits and the accused No.2 to 7 used to take shelter under one or the other fabricated pretexts. That despite the repeated follow-up actions, the accused failed to provide effective functioning of the treatment plants which resulted into hazardous and dangerous water pollution harmful to human beings, creatures and plants. That after undergoing the necessary legal procedure and formalities of taking samples and having them analysed, it was established that the accused had not provided proper treatment facilities and untreated trade effluent was being drained into the sea. Thus, it is alleged in the complaint that the accused had violated the terms and conditions prescribed in the consent order and, for a considerable time, the accused had been evading implementation of the conditions violating the provisions of Section 25 of the Act. On these allegations, the complaint prays to issue processes against the accused for being dealt with according to law. A statement of the complainant, the Environmental Engineer of the Board, is recorded below the complaint wherein the directors and the factory manager of the company are again alleged to be responsible persons.

4. The learned senior counsel appearing for the petitioners has vehemently and elaborately canvassed the contentions of the petitioners and cited in support a

catena of precedents. Restricting his arguments in defence of the petitioners only as the directors of the company, it is clarified at the outset that the submissions may not apply to the company itself or the factory manager who was admittedly in charge of the factory. It is firstly submitted that a plain reading of the complaint does not make out any case against the petitioners and does not disclose any offence which is alleged to have been committed by the petitioners. A mere bald statement that the directors, the accused No.2 to 6, were responsible for and in charge of the conduct of the business of the company is not sufficient to issue process against them. The learned Magistrate ought to have applied his mind and, on the material placed on record, formed an opinion as to whether the petitioners could be charged with any offence. The burden of proving that the petitioners were, at the relevant time, in charge of and responsible for the conduct of the business of the company, lay on the prosecution and in absence of a clear averment in that regard in the complaint itself, such a burden cannot be discharged. It was further submitted that by merely holding the office of the director of a company, a person does not come within the description of a person to whom the deeming fiction under Section 47 of the Act would apply. It was reiterated and emphasised that the complaint does not disclose the basic facts or necessary particulars for the court to infer the role played by each of the directors in the commission of the alleged offence.

5. In order to appreciate the arguments advanced on either side, it is necessary to refer to Section 47 of the Act, which reads as under:

"47. Offence by companies:

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section-

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm."

A plain reading of Section 47 indicates that it fixes the responsibility for the offence by a company in two ways. Under sub-section (1), every person in charge of and responsible to the company for the conduct of its business as well as the company has to be deemed to be guilty of the offence committed by the company and is, therefore, required to be proceeded against accordingly; whereas under sub-section (2), where it is proved that the offence was committed with the consent or connivance of or was attributable to any neglect on the part of any director of the company, such director or other officer has to be deemed to be guilty of the offence committed by the company. Thus, sub-section (1) of Section 47 implicates every person for the time being in charge of and responsible to the company in the conduct of its business, whereas sub-section (2) implicates directors and other officers provided it is proved that the offence was committed with the consent or connivance of or was attributable to any neglect on their part. The consent or connivance or neglect on the part of such director or officer is not a matter of inference but it has to be proved. However, unlike as in the case of any person under sub-section (1), the director or other officer is not required to be in charge of and responsible to the company in the conduct of its business under sub-section (2). This distinction and the following clarification has to be borne in mind in considering the directors'

liability to be proceeded against. The other important aspect is that whereas under the proviso to sub-section (1), the presumption of guilt is rebuttable by such person and other officers referred to in it, sub-section (2) creates vicarious liability of consenting, conniving or negligent directors and other officers referred in it, for the offence committed by a company. The difference is that while there is presumption of guilt which can be rebutted under sub-section (1), the liability under sub-section (2) arises only when the consent, connivance or negligence of the director is proved.

If any director, manager etc. referred to in sub-section (2) falls in the expression "every person who is in charge of and responsible to the company for the conduct of the business of the company" of sub-section (1), then the presumption of guilt would arise and it would be for such person to rebut it under the proviso. The effect of the non-obstante clause in sub-section (2) is that even when a director or manager referred in sub-section (2) is not in charge of or responsible for the business of the company, he will be liable if it is proved that the offence is committed with the consent or connivance of or is attributable to the negligence of such director or manager notwithstanding the fact that he was not in charge of and responsible for the conduct of the business of the company. In cases under both the sub-sections, however, the person concerned is liable to be proceeded against if the necessary allegations are found in the complaint.

6. Relying upon the judgment in CHANDRAPAL SINGH v. MAHARAJ SINGH (AIR 1982 SC 1238), it is submitted on behalf of the petitioner that, if , on the averments of the complainant himself in the complaint the court could not have taken cognizance of an offence, it is liable to be quashed and mere mentioning the number of the section constituting the offence is not sufficient to proceed further. It was further submitted, relying upon the judgment in PUNJAB NATIONAL BANK v. SURENDRA PRASAD SINHA (AIR 1992 SC 1815), that it would be the responsibility and duty of the Magistrate to find whether the concerned accused were legally responsible for the offence charged for, before issuing the process. The following observations of the Hon'ble Supreme Court were pointed out:

> "The complaint does not make out any case much less prima facie case, a condition precedent to set criminal law in motion. The Magistrate without adverting whether the allegation in the

complaint prima facie makes out an offence charged for, obviously, in a mechanical manner, issued the process against all the appellants....

"It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage, the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta."

7. Relying on the judgment in PEPSI FOODS LTD. v. SPECIAL JUDICIAL MAGISTRATE [JT 1997 (8) SC 705], it is submitted and pointed out that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and to see if that would be sufficient for the complainant to succeed in bringing the charge home. Thus, the Magistrate is required to examine if any offence is prima facie committed by all or any of the accused. The judgment reported in 1999 (96) Company Cases 106 is also cited in support of the this submission.

8. It is further submitted that the burden of proving that the accused were, at the time of commission of the alleged offence, in charge of and responsible to the company in the conduct of its business lies on the

prosecution. Relying upon the judgment of the Apex Court in GIRDHARILAL GUPTA v. D.N.MEHTA (AIR 1971 SC 2162), it is submitted that the person "In charge" must mean that the person should be in overall control of the day-to-day business of the company. The directors may be a party to the policy being followed by the company and yet not be in charge of the business of the company, whereas, the manager, who is usually in charge of the business, but such officer may not be in overall charge. It is submitted that the Apex Court has, in the said judgment cited with approval, the following observations of the Allahabad High Court:

> "There can be directors who merely lay down the policy and are not concerned with the day to day working of the company. Consequently, the mere fact that the accused person is a partner or director of the company, shall not make him criminally liable for the offences committed by the company unless the other ingredients are established which make him criminally liable."

It is therefore submitted, relying upon the observations of Kanhaiya, J. in STATE v. S.P.BHADANI (AIR 1959 Patna 9), that the officers of the company not in direct charge of the management of the business are immune from the liability for the offence unless they have contributed to its commission by consent, connivance or neglect.

9. It has to be noted here that in GIRDHARILAL GUPTA (supra), the Hon'ble Supreme Court, while examining the case under the provisions of Section 23-C (2) of the Foreign Exchange Regulations Act, 1947, has also observed as under:

> "The question then arises whether the appellant was in charge of the conduct of the business of the firm at the time the contravention was committed. He was not physically present in Calcutta at the time of the commission of the offence and the prosecution evidence shows that one Jagdish Prasad was the manager of the firm. It is true that the onus of proving that the appellant was in charge of the conduct of the business of the company at the time the contravention took place lies on the Prosecution, but when a partner in charge of a business proceeds abroad it does not mean that he ceases to be in charge unless there is evidence that he gave up charge in favour of another

person. Therefore, we must hold that the appellant was in charge of the business of the firm within the meaning of Section 23-C (1)."

10. The aforesaid judgment of the Supreme Court is also relied in support of the submission that the petitioners, merely by virtue of their office as the directors of the company, do not come within the description of the person to whom the deeming fiction under sub-section (1) of section 47 of the Act would apply. The burden of the argument is that a director is not, without anything more, a person in charge of the company for the conduct of its business. Relying upon the judgment of the Apex Court arising from a case under the Prevention of Food Adulteration Act, reported in AIR 1983 SC 67, the following observations are pointed out:

"So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos.4 to 7) has been made out ex-facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

It is submitted that, in the instant case, as it was in the above-mentioned case, there is no whisper apart from the presumption drawn by the complainant, that there is any act committed by the directors from which an inference can be drawn as to their vicarious liability.

11. Referring to the complaint and the statement recorded thereunder, it is further submitted on behalf of the petitioners that the averments and allegations of the complainant do not disclose any offence, particularly as far as the petitioners are concerned. According to the petitioners, the role played by them in the alleged commission of the offence is nowhere disclosed in any detail. It is submitted that, in absence of relevant

particulars, there was no factual basis before the Magistrate to proceed against the petitioners. Relying upon the judgment reported in 1999 (96) Company Cases 106, it is submitted that the directors, ipso facto, are not in charge of and not responsible to the company in the conduct of its business. Mere averment that the accused are directors of the company is not enough to proceed against them in a criminal case. In the aforesaid case before the Andhra Pradesh High Court, the petitioners - directors were accused of having committed an offence under Section 138 of the Negotiable Instruments Act even though they had not issued the cheques in question. The only question arising for consideration was whether such directors could be held to be liable for the offence, if any, committed by the company. It was found that the complaint did not disclose anything against such directors and no allegation that they were in charge of and were responsible to the company for the conduct of its business at the relevant time. In this context, it is held that every director of a company is not automatically vicariously liable for the offence committed by the company.

Relying upon the judgment in AIR 1983 SC 61 (supra), it is further submitted that there are ample provisions in the Code of Criminal Procedure under which a person may be proceeded against at a later stage if in the course of any inquiry into or trial of an offence it appears that such person could be tried. However, if the complaint itself does not disclose the basic facts or particulars, an inference cannot be raised as to the role played by a particular accused.

12. In the context of the submissions made as above, the learned counsel for the petitioners has further relied upon the judgment of this Court rendered in the case of GUJARAT INDUSTRIAL CO-OP. BANK LTD. v. PRAKASHCHANDRA NAVNITRAI VORA (1996 (2) GLR 445) wherein it is observed that, if no specific information or material with name of the accused as to how offence was committed is manifest in the complaint, or in the verification, against all the accused persons, the order of issuing the process is required to be quashed.

13. The judgment of the Hon'ble Supreme Court in I.T.C. LTD. v. DEBTS RECOVERY APPELLATE TRIBUNAL [1998 (2) SCC 70] is relied upon to emphasise that creation of an illusion of cause of action by clever drafting is not permitted in law and a clear right to sue should be shown in the complaint and, on that analogy, the involvement of

the petitioners by just mentioning their names as directors in the complaint would not be sufficient to proceed against them.

14. Thus, in short, as arduously contended and canvassed on behalf of the petitioners, the complaint does not disclose the necessary material facts to implicate the petitioners in the offence alleged to have been committed by the company; and without proper application of mind to the important factual and legal aspects of the matter, the process has been issued in the criminal case against the petitioners. It is, therefore, prayed that the complaint and the proceedings as against the petitioners ought to be quashed in exercise of the powers under Section 482 of the Code of Criminal Procedure.

15. After hearing the arguments advanced on behalf of the respondents, it is further submitted on behalf of the petitioners that they cannot be arraigned under sub-section (2) of Section 47 of the Act for any neglect attributable to them when it was nowhere shown that a duty was cast upon them and the same was not performed. Referring to the notice served upon the company before launching of the prosecution, it is submitted that a notice to the company is not a notice to the directors and hence their consent or connivance in the continuation of any violation cannot be inferred. It was also submitted that, it is a common place that, directors are not having any executive function but they only discharge deliberative functions. Hence, it was all the more important to allege their actual and direct involvement in a particular act or omission to drive home the charge under sub-section (2) of Section 47 of the Act.

16. The learned counsel Shri K.H.Baxi appearing for the Board, the original complainant, has submitted that the necessary averments implicating the company as well as its directors can be found in the complaint itself. It is pointed out from the complaint that the petitioners are stated to be responsible for and in charge of the conduct of the business of the company. It is also stated that when the "treatment plant" of the company was never found to be working at the time of the inspection visits, the petitiones used to take shelter under one or other fabricated pretexts and despite repeated follow-up actions, the accused had failed to provide effective functioning of the treatment plant. It is also stated in the complaint that the accused had failed to operate the treatment plant effectively and efficiently. It is further alleged in the complaint that for a considerable

time the accused had been evading implementation of the conditions of the consent order and had thus violated the provisions of Sections 24 and 25 of the Act, which constituted the offence. It is further submitted that the Act is a special enactment enacted to provide for prevention and control of water pollution and for carrying out its objects, special penal provisions are made. Where offences are committed by a legal person like a company, real persons responsible for the offence cannot be allowed to take shelter behind the corporate veil. Therefore, if from the averments made in the complaint, it is prima facie found that the acts of omission or commission are attributable to the directors or other officers of the company, they have to be arraigned in the criminal proceedings in view of the fact that in such cases they are deemed to be as guilty as the company as provided in Section 47 of the Act. If at all the offence is committed without the knowledge or despite due diligence by a person in charge of the company, provision is made for discharging him. Similarly, a director, manager or other officer can also be discharged if the prosecution fails to prove that the offence was committed with his consent or connivance or that it was attributable to any neglect on his part. However, as submitted by the learned counsel, it is a matter of evidence and can be decided at the appropriate stage.

17. Countering the arguments advanced on behalf of the petitioners, the respondent has relied upon a Full Bench decision of Patna High Court in MAHMUD ALI v. STATE OF BIHAR (AIR 1986 Patna 133). The precise formulations of issues arising in that case are presented in the following terms:

"(i) Whether S.47 (1) of the Water (prevention and Control of Pollution) Act, 1974, necessarily mandates the incorporation of the words "he was in charge of, and was responsible to the company for the conduct of the business of the company" in all complaints against a Chairman, Managing Director, or General Manager of the company for offences in contravention of the said Act ?

(ii) Whether S.47 (2) of the Act aforesaid inflexibly mandates the incorporation of the allegation that the offence was committed with the consent or connivance or was attributable to the neglect on the part of the Chairman or Managing Director or General Manager of the Company in the complaint itself?

(iii) Whether 1971 BLJR 1005 (R.N.Dutta v. State) and a long line of precedent taking a similar view both earlier and subsequent thereto with regard to the pari materia provisions of S.10 of the Essential Commodities Act lay down the law correctly?"

After examining the facts and contentions in that case, it is concluded by the Court that the Question No.(i) posed as above has to be answered in the negative. It was held that Section 47 (1) of the Act does not necessarily mandate the incorporation of the words "was in charge of and responsible to the company in the conduct of the business of the company" in a complaint against the Chairman, the Managing Director or the General Manager of the company for offences in contravention of the Act. It is further observed that, in a way, sub-section (2) widens the net of vicarious liability to bring within its sweep not only the primal officials of the company but even other officers thereof if the commission of the offence by the company can be established to have been done with the consent, connivance or neglect on their part. The usual and the normal rule of criminal law is that the charge must be brought home directly to the offender. However, sub-section (2) lightens the burden by providing that even if it is proved that the principal officers were guilty of consent, connivance or negligence with regard to the offence committed by the company, they would be within the net of culpability. This is effectuated by an express deeming fiction. Sub-section (2) may truly come into play during the course of the trial and even at its conclusion when it is proved that the offence has been committed with the consent, connivance or negligence of the company's principal officials. Thus, it is further concluded by the court that the answer to Question No.(ii) has also to be in the negative; further holding that Section 47 (2) does not mandate the incorporation of the allegation that the offence was committed with the consent or connivance or was attributable to the neglect on the part of the Chairman, the Director of the General Manager of the company in the complaint itself. The answer to Question No.(iii) is also rendered in the negative by the Patna High Court.

18. The respondent has further relied upon the judgment of the Apex Court in the case of U.P.POLLUTION CONTROL BOARD v. MODI DISTILLERY (AIR 1988 SC 1128) which is also directly under the Water (Prevention and Control of Pollution) Act, 1974. In that case, the Hon'ble Supreme Court has examined the provisions of

sub-sections (1) and (2) of Section 47 of the Act in comparison to sub-section (4) of Section 17 of the Prevention of Food Adulteration Act, 1954. That case had a similar backdrop of facts insofar as the industrial unit was discharging highly noxious and polluted trade effluent into a river through a drain. The unit did not have proper arrangements for treatment and consent under the Act was refused. Thereafter, a legal notice directing the company to furnish certain information regarding names of Managing Director, Director and other responsible persons was issued and after the legal notice, an inartistically drafted complaint was lodged wherein eleven persons including the chairman, vice chairman, managing director and members of the board of directors of the company were arrayed as accused. In a revision application filed against the same, the High Court quashed the proceedings on the ground that there could be no vicarious liability saddled on the chairman, vice chairman, managing director and other members of the board of directors of the company under Section 47 of the Act unless there was prosecution of the company. Thus, the question whether the chairman, the vice chairman, the managing director and the members of the board of directors are liable to be proceeded against in absence of prosecution of the company directly arose. After considering the provisions of Section 47 of the Act, it is held that, having wilfully failed to furnish the requisite information, it was not open to the chairman, directors etc. to seek court's assistance to derive advantage from the lapse committed by their own industrial unit. The objection raised by the petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. The technical flaw in the complaint was attributable to the failure of the industrial unit in furnishing the requisite information. The court also found that there were averments in the complaint to the effect that the chairman, the vice chairman, the managing director and the members of the board of directors were also liable for the alleged offence committed by the company. The Hon'ble Supreme Court further went on to observe that it was an instance of sheer negligence in drafting the complaint, by which a large business house was allowed to escape with impunity the consequences of the breaches committed by it of the provisions of the Act. That it cannot be doubted that in capacities such as that of chairman, vice chairman, managing director or other directors, they were in charge of and responsible for the conduct of the business of the company and were, therefore, deemed to be guilty of the offence and liable to be proceeded against. It is further observed that it

would be a travesty of justice if the big business house was allowed to defeat the prosecution launched and avoid facing the trial on a technical flaw which is not incurable. Thus, the order passed by the High Court was set aside and that of the learned Chief Judicial Magistrate directing issue of process was restored with a direction to proceed with the trial as expeditiously as possible in accordance with law. A feeble attempt on behalf of the petitioners is made to distinguish this judgment on the ground that in the facts of the present case no notice directing the company to furnish names of the directors and other responsible persons is alleged to have been issued and direct inference of responsibility of all the directors is drawn by the complainant. The observations of Their Lordships in the later part of the judgment are, however, clearly encompassing the larger question which arises in this case.

19. In the facts of the present case, it is not specified in the complaint itself whether the respondents are arrayed under sub-section (1) or sub-section (2) of Section 47 of the Act. However, as pointed out earlier, there are clear averments in the complaint alleging that the accused including the petitioners are in charge of and responsible for the conduct of the business of the company. It is also alleged that while the treatment plants of the company were never working at the time of monitoring inspection visits, the accused, which term includes the petitioners, used to take shelter under one or the other fabricated pretexts, and that the accused had failed to provide effective functioning of the treatment plants which had resulted into hazardous and dangerous water pollution. It is alleged in the complaint that for a considerable time the accused had been evading the implementation of the conditions of the consent order violating the provisions of Section 25 of the Act. Thus, it cannot be said that no case is made out or that there is no material in the complaint implicating the petitioners to which the learned Magistrate could have adverted to before issuing the process; nor can it be said that the process has been issued against the petitioners mechanically or without application of mind. This is not a case where motive of harassment or abuse of process of court is attributed to the complainant. As seen earlier, considering the averments made in the complaint and the statement recorded below it, it would be reasonable that the case is proceeded for a full-fledged trial. This court does not find any fundamental legal defect or an absolute lack of material against the petitioners.

20. Therefore, following the well-settled legal position on the subject of quashing criminal proceedings, this is not a fit case where the extraordinary powers under Section 482 of the Code of Criminal Procedure, which are required to be sparingly exercised, should be invoked to quash the proceedings at the initial stage. A reference in this regard may be had to the following observations of the Hon'ble Supreme Court in STATE OF HARYANA v. BHAJAN LAL [JT 1990 (4) SC 650]:

> " We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

21. For these reasons, the application is rejected. Rule is discharged with no order as to costs. The learned 5th Joint Judicial Magistrate, First Class, Bhavnagar, before whom the Criminal Case No.6 of 1990 is pending, shall proceed with the trial as expeditiously as possible in accordance with law.

22. After the judgment is pronounced, the learned counsel for the petitioner makes a request to stay the order as above for a period of four weeks. The request is granted and the order shall not be implemented for a period of four weeks from today.

(KMG Thilake)

######